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SUBJECT: UKRAINE: DAS KRAMER VISIT: POSSIBLE WAY FORWARD ON NEW ELECTIONS ON THE ROCKS?

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Classified By: Ambassador for reasons 1.4(a,b,d).

¶1. (C) Summary. Visiting DAS Kramer met with all the key players in the Ukrainian political crisis May 23-24: President Yushchenko, PM Yanukovych, opposition leaders Yuliya Tymoshenko and Yuriy Lutsenko; National Security and Defense Council Secretary Plyushch; and FM Yatsenyuk. Amidst background drama involving turmoil around the courts and the Prosecutor General's Office (PGO), the major figures seemed cautiously optimistic during our meetings that the May 23 meeting between Yushchenko and Yanukovych may have secured agreement for elections (on September 30). But crucial details remain to be resolved, both to allow elections to proceed and for the sides to save face; distrust remains high, and all sides seem frustrated and tired.

¶2. (C) Summary ctnd. The Constitutional Court continued "chamber" sessions under the guidance of Judge Pshenychniy, whom Yushchenko fired on April 30, running hearings as acting chairman attended by fewer than the required quorum of 12 judges. Yushchenko appeared on television on the evening of May 23 to say that the Court was discredited and operating in an unlawful and unconstitutional manner, and called on the Prosecutor's Office to investigate. In response, coalition MPs and police barricaded the court on May 24 to protect it from the presidential team. On May 24, Yushchenko issued a decree dismissing Oleksandr Piskun as Prosecutor General, as Presidential Security Service personnel and Berkut riot police deployed to the PGO, where they had a minor clash as Piskun reportedly sought to gain access into his former office to gather personal items. The President called a meeting of power ministers and addressed the nation again May 24 urging that criminal charges be called against Interior Minister Tsushko for the interjection of force into the political conflict. The President has postponed his trip to the Czech Republic and will remain in Kyiv and the PM cut short a trip to Yalta to host a CIS meeting, returning to Kyiv and calling an emergency cabinet meeting. After the meeting, the PM addressed the press, stating that the government will prevent chaos and civil war and will pursue responsible policies. Yanukovych was careful not to accuse the President directly of anything.

¶3. (C) Comment. Despite the cautious optimism displayed by all sides during DAS Kramer's meetings that they are closer to an agreement now than they were last week, tensions remain high and it is not a given that the election is a done deal. The ruckus around the Constitutional Court and Yushchenko's firing of the Prosecutor General, combined with the high-level emergency meetings called by both the President and PM, do not bode well for an agreement. Trust remains a problem, especially between the President's and PM's teams. The first reported clash in this seven-week crisis, the

scuffle between security forces outside of the PGO, has raised tensions again and could result in the scuttling of the latest steps toward a political compromise. We have been in touch with the President and PM's teams to encourage an urgent meeting; all have agreed. European Ambassadors made the same case. The President and PM are now scheduled to meet at 11 am May 25 and will attempt to reduce tensions and get back on track toward an agreement. DAS Kramer reiterated his main message in all meetings that the U.S. advocated a democratic, peaceful, legitimate solution to the political crisis as soon as possible. While expressing understanding for the factors and dynamics involved in the current stalemate, and underlining that the U.S. sought neither to mediate nor meddle, he urged thought and caution on all sides to avoid radical steps that could worsen the situation. End summary and comment.

Yushchenko Still Looking for a Compromise

¶4. (C) Yushchenko started the May 24 meeting with an hour-long, but clear explanation as to how Ukrainian politics arrived at this point. First the President had supported a moratorium on demonstrations and had looked to the Central Election Commission (CEC) and the Constitutional Court (CC) to do their work. When nothing came of that strategy, the hope was that the resolution would come from agreement on the Rada adopting a small package of legislation, to include suspending the decree, amending the laws on the election, budget, and the CEC, and passing laws on the opposition and imperative mandate. Then the parliament would be dissolved and the campaign would begin. The President said that he and Yanukovych had finally reached an agreement on May 4 to hold early elections, but Moscow had thought it was a bad deal and instructed the Communists (CPU) to drag out negotiations.

¶5. (C) The President said that on May 23, he and the PM had

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reached another agreement, setting the election date for September 30. Yanukovych told Yushchenko that Regions officials would sign it and he would get Moroz and Symonenko to sign it too. Yushchenko said that he understood that the PM was in a difficult position and under a lot of pressure, but that he had the ability to decide and resolve the situation. Nevertheless, in Yushchenko's view, the PM keeps backing away. During the meeting, Yushchenko stated to DAS several times that he was committed to resolving the current standoff in a democratic manner without resorting to force.

¶6. (C) Yushchenko said that he had needed to make decisions; one had been to remove Piskun as Prosecutor General--he was a politicized advocate for Regions, which controlled the entire PGO. In Yushchenko's view, Piskun had remained engaged in politics, in part because he had not yet resigned from his Rada seat. (Note. The constitution says the President can only fire the PGO with the Rada's consent, but Yushchenko cited a contradictory constitutional article and law in defense of his decision. In a late evening public address, the PM refuted Yushchenko's claim, noting that Piskun's letter of resignation from the Rada was officially registered May 14. End note.) In addition, the CC was broken--Judge Stanik was corrupt, other judges were influenced by Regions and Medvedchuk and the Russians. As President, he had the constitutional right to remove judges on his quota, which he did. The CEC was also politicized. The President told DAS Kramer that he had heard the criticism that he was trying to usurp power; however, if he had wanted to usurp power, he wouldn't do it through elections, but sometimes he had to take steps to pressure the other side.

¶7. (C) If there is no progress in the next few days, Yushchenko said the NSDC would become the only available answer in a shrinking set of tools. He will hold an NSDC meeting on May 29, then 171 opposition MPs will resign and there won't be a constitutional Rada anymore. He knew that

they needed to intensify contact with the PM in order to bridge the East-West divide and eventually they had to get to a broad coalition. (Note: This is the first time that Yushchenko has openly expressed a preference for a broad coalition in any meeting with us. End Note.) He had talked to Tymoshenko about this, but she and OU leader Kyrylenko were now a complicating factor, concerned that political intrigue was going on.

¶ 8. (SBU) On the evening of May 23, Yushchenko gave a brief address to the nation, in which he promised elections would happen without specifying when, and spent the bulk of his time discussing the problems with the Constitutional Court and the three judges he fired but who are still working. He said the Court was "paralyzed and demoralized." He said that the Court had not issued a single ruling in the first eight months after it was seated and that it could have addressed the issues of imperative mandate--when MPs switch factions--last fall when the appeal was sent, contributing to the current political crisis. He concluded that the Court was losing its constitutional legitimacy and demanded that the PGO investigate the CC, that the Supreme Court stop the practice of using court rulings for political ends, and that all political forces stop pressuring the CC.

¶ 9. (C) Comment. On the margins of the meeting with Yushchenko, Deputy Presidential Secretariat Head Chaliy told DAS Kramer that the PM was under pressure to back away from compromise from five different sources: the radicals within Regions; the Communists and the Socialists; Rada Speaker Moroz; PM Chief of Staff Lyovochkin and Minister of Fuels and Energy Boyko representing RosUkrEnergo (RUE); and the Russians. Chaliy claimed that the document that the Yanukovych team sent to him after the May 23 Yushchenko-Yanukovych meeting was different from what the President and PM had agreed--and therefore, the document had not yet been shown to the President.

Yanukovych Says He Wants A Deal Too

¶ 10. (C) With no reference to his meeting with Yushchenko or any hint that they might have reached an agreement, Yanukovych laid out his vision for political compromise for DAS and Ambassador on May 23. Two issues remain, he said; they need a legal basis for holding pre-term elections--without it, the coalition won't participate--and the Rada needs to adopt a package of legislation to ensure fair and transparent elections. Only after these laws are adopted by the Rada will it be possible to turn to the issue of how to conduct pre-term elections. After that, if enough opposition deputies resigned from their factions in the Rada--as Tymoshenko and Yushchenko have suggested--that would

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leave the Rada without a quorum. At that point the President would have the legal basis to issue a decree that would call pre-term elections based on a constitutional provision (the Rada must have at least 300 deputies); the PM indicated specifically that he would find this to be acceptable. The coalition could then make clear to their voters that they had not made a political deal to hold these elections; the constitution required that pre-term elections be held.

¶ 11. (C) With regard to coalition calls for a constitutional amendment as part of the deal--a process that would take months--Yanukovych said that this was "an issue for discussion and compromise," indicating that it was not a hard and fast demand. Yanukovych suggested that the Rada should return to work next week, with the opposition deputies in their seats. (Note. Yushchenko told the press prior to the meeting with the PM that opposition deputies were prepared to go back to work next week as well. End note.) Yanukovych stated clearly that the government will not require a Constitutional Court decision on the President's decrees to resolve the crisis. The President had made a mistake in

taking on the CC--and his decisions regarding this court could have implications for the judiciary across the board.

¶12. (C) The coalition view, Yanukovych argued, has always been that they do not need pre-term elections to resolve the political crisis; however, Yushchenko had chosen the more radical approach. Yanukovych noted that the President had many "radicals" around him who swung from one extreme to the other without ever finding middle ground. However, he repeated several times that he was confident that Ukraine would emerge stronger from this crisis. Yanukovych ended the meeting by repeating a statement that he posted on his website earlier in this crisis--the President's team has the cards right now. He can play them, but this is the dangerous way, outside of the law, that could lead to the division of Ukraine and civil war; and Yushchenko would be responsible.

Tymoshenko Doesn't Trust the PM

¶13. (C) A tense Tymoshenko confirmed late May 23 to DAS and Ambassador that the deal on the table was much the one that Yanukovych had described, although she was surprised that Yanukovych was on board with it. She said that the election would be September 30, but the date would not be announced immediately. Instead, the Rada faction leaders will announce it, so that it appears to be a Rada decision, which will protect Yanukovych's ratings (since he will not look like he conceded or failed.) She said that BYuT was ready to vote for the small package of legislation and to resign from the Rada to bring it below quorum, triggering its dissolution.

¶14. (C) Tymoshenko also evinced surprise that Yanukovych had said that a CC ruling was not necessary. She said that she and Yushchenko had long been saying that the CC was not the proper arbiter of this conflict, but it was the first time she had heard of Yanukovych saying this. She remained "guardedly optimistic," she said, cautioning that Yanukovych's words and deeds often did not match. She also thought that while Regions would be campaigning, they would work in parallel to try to prevent or obstruct the elections, possibly through the Constitutional Court or finding a way to claim Yushchenko had violated the agreement and then backing out of the election. She also said that the only safeguard for the elections is for the President to stand firm and they will be pushing him to do so the whole way to the ballot box.

The more forceful Yushchenko is, she argued, the more compromising Yanukovych becomes.

¶15. (C) Tymoshenko maintained the position that if Yanukovych and the coalition backed away from the new deal, tough measures should be used. When asked to define "tough measures," she said that the NSDC should take control of the process and take the following three steps, adding that this should all be done by May 26 if progress did not continue. First, it should appoint new members to the CEC who will facilitate the election process. Then it should appoint a new acting Prosecutor General; if the PGO and CEC were on board with elections, the Yanukovych government could keep working without problem. Finally, the NSDC would subordinate all armed forces and units in the country to the President so that they could not be dragged into the conflict. (Note. Tymoshenko's most trusted deputy, Oleksandr Turchynov, was named First Deputy Secretary of the NSDC earlier May 23, which would presumably give her the ability to push the NSDC in that direction. End note.)

NSDC Secretary Plyushch: Closer, but Need to Save Face

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¶16. (C) NSDC Secretary Plyushch, who attended the May 23 Yushchenko-Yanukovych meeting, told DAS Kramer on May 24 that the two Viktors had eventually agreed on a September 30 date for elections after Yanukovych had initially tried to avoid

agreeing on a date, suggesting that they leave it up to faction leaders to decide. After Yanukovych departed Kyiv to attend an evening soccer match in Donetsk, followed by a May 24 CIS PM meeting in Yalta, the process of agreeing on the meeting's minutes ran into difficulty. DPM Azarov had tried to include 20 issues as preconditions for Regions' agreeing on September 30 elections; Plyushch claimed that nine of the issues had not even been discussed at previous working group meetings. There was no guarantee that the process of adding new demands and conditions would not continue. Perhaps the biggest hurdle was Regions' demand to amend the Constitution before elections. In practice, that meant waiting at least six months, since there needed to be an initial Rada vote on changes, a Constitutional Court review, then action by 300 MPs in the next Rada session. But there were no longer 300 MPs participating in the Rada. Kramer mentioned that Yanukovych had indicated to him on May 23 that Constitutional amendments were not a mandatory element in the package.

¶17. (C) Plyushch felt the process was closer to resolution; it was encouraging that both Moroz and Yanukovych indicated May 23 that the resignation of 190 BYUT and OU MPs could form the basis for the Rada's dissolution. But there remained an issue of saving face for all sides. One major problem was that throughout the 52 days since Yushchenko's first decree, Yanukovych consistently had said one thing but did another. Yushchenko had said on May 4, after Yanukovych had agreed to new elections, that there were no winners or losers in this process. But it was clear that some political forces were ready/willing to contest elections, and others not. The President had the right to call new elections, as well as dismiss judges on his quota. The Ukrainian people had the right to vote - or not. Political parties had the right to campaign and propose their vision to the electorate, but not to set terms and conditions for an early election date, a presidential prerogative.

Monkey Business at the Constitutional Court, PGO

¶18. (C) The Court continued its work this week, beginning with the May 21 announcement from Acting Chairman Pshenychniy that the Court had voted to throw out the case on the April 2 presidential decree and would turn to the April 26 decree. Stepan Havrysh, one of Yushchenko's nominees to replace the judges Yushchenko fired April 30-May 1, told the press that he expected the Court will find the second decree unconstitutional. Also on May 21, one Yushchenko appointee, Judge Lylak, submitted his resignation to the President. He has not commented publicly, but Presidential Secretariat Head Baloha told the press that Lylak had decided to step down in protest of Pshenychniy's takeover of the Court. A second Yushchenko appointee, Judge Shyshkyn, has been "sick" and told us that he would not be going to work, also because of Pshenychniy's promotion and the general lack of professionalism in the Court.

¶19. (C) On May 23 Tymoshenko told us that five judges were now "ill" and no longer attending sessions. Pshenychniy said on May 24 that only 10 judges had come to the session he called. A group of coalition MPs, along with two busloads of police, formed a barrier around the Court on May 24 to keep the presidential side from preventing the three fired judges from entering the building.

¶20. (C) Also on May 24, Plyushch announced that Yushchenko had fired Prosecutor General Piskun, whom the President had strongly criticized two days ago for not actively investigating the CC and the CEC. After refusing to leave his office in the morning, Piskun left and then returned with a group of coalition MPs. After not being allowed back into the office, approximately 10 Berkut elite policemen appeared and tried to break the door down, according to press reports. Other reports suggested Presidential Secret Service personnel had earlier deployed to the PGO building. (Note. This is the first time we have seen security personnel coming to the aid of one side or the other in the political crisis. End note.) Reportedly at least one security officer was

slightly wounded in this minor clash.

¶21. (C) Reacting strongly to the events at the PGO, Yushchenko called an emergency meeting of the power ministers, and then held a televised press conference the evening of May 24, condemning the interjection of force into the ongoing political situation. He singled out Interior

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Minister Tsushko as responsible for the order, calling on the PGO to prosecute Tsushko for taking this step. Yushchenko also called on all law enforcement and security agencies, as well as soldiers and officers, to refuse any orders to use force since this would be illegal. He said that those who gave the orders to use force, as well as those who chose to follow those orders, would have committed a crime.

¶22. (U) DAS Kramer did not have an opportunity to clear this cable.

¶23. (U) Visit Embassy Kyiv's classified website:

www.state.sgov.gov/p/eur/kiev.

Taylor